

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-AT-315
)	
Fayette County Broadcasting)	NAL/Acct. No. 200332480003
Licensee of Station WSTN(AM))	
(Somerville, Tennessee))	FRN 0005-0323-70
West Helena, Arkansas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 5, 2002

By the District Director, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Fayette County Broadcasting, licensee of station WSTN(AM), Somerville, Tennessee, apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35(a) of the Commission's Rules ("Rules").¹ Specifically, we find Fayette County Broadcasting apparently liable for failure to have operational Emergency Alert System ("EAS") equipment installed at its station.

II. BACKGROUND

2. On August 6, 2002, an agent of the FCC Enforcement Bureau's Atlanta Office ("Atlanta Office") inspected radio station WSTN(AM), Somerville, Tennessee. The agent found the EAS equipment installed in a rack but not connected to audio and power sources. EAS logs could not be produced to indicate EAS test activations had been sent or received, or that EAS equipment had been removed from service.

3. During a telephone interview on September 10, 2002, the station owner stated that the EAS equipment was disconnected around May 2002, in order to add new satellite services and was apparently not reconnected.

4. On October 2, 2002, the station owner faxed a letter to the Atlanta Office confirming that the EAS equipment was removed for service in May 2002 and returned to the station in July 2002. He further stated that the EAS equipment was not reconnected until two days following the FCC inspection on August 6, 2002 and that all station personnel had been retrained to manually write/log each and every EAS test.

¹ 47 C.F.R. § 11.35(a).

III. DISCUSSION

5. Section 11.35(a) of the Rules states that "broadcast stations ... are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation." From approximately May, 2002, until August 8, 2002, Fayette County Broadcasting did not have installed at their station properly operating EAS equipment.

6. Based on the evidence before us, we find that Fayette County Broadcasting willfully² and repeatedly³ violated Section 11.35(a) of the Rules by failing to have operational EAS equipment installed so that the monitoring and transmitting functions were available.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failing to install EAS equipment is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the statutory factors listed above, this case warrants an \$8,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Fayette County Broadcasting is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violation of Section 11.35(a) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Fayette County Broadcasting SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80.

⁵ U.S.C. § 503(b)(2)(D).

⁶ U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Nal/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an instrument plan should be sent to Chief, Revenue and Receivables Operations Group, 445 12th Street S.W., Washington, DC 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested, to Fayette County Broadcasting, 798 N. Sebastian, West Helena, Arkansas 72390.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office

Attachment.

⁸ See 47 C.F.R. § 1.1914.